

DELEGATE BENNETT: Mr. Chairman and ladies and gentlemen of the Convention: I have introduced this pro forma amendment in order that I and perhaps others may wish to explain their views with regard to the meaning of the freedom of religion declaration.

I do not wish to provoke controversy or divisiveness here in this Convention which has so far succeeded in maintaining an atmosphere of good will and understanding. I do not think, however, that we can be true to our trust and leave a question of such surpassing importance without an opportunity to discuss it.

It is, as you know, on the controversial issue of separation of church and state on which the Constitution and the Convention of New York foundered. It was a question of prime importance before the legislature in Florida when they were in the process of reviewing their Constitution. It has been the major issue in Rhode Island, and likewise in Michigan, and it was, as all of you know, the paramount issue of the Convention of 1787 when our Constitution was adopted.

To refresh your recollection, you will remember that Madison, who, incidentally, was the son of a minister himself, spent ten years of his life fighting against Patrick Henry and the Virginia establishment for absolute separation of church and state. He wanted what he called a "wall of separation", between church and state, and Jefferson agreed with him.

He nearly lost the battle in Virginia when the assessment bill was passed. This was a measure, as you recall, which levied taxes and which was nothing less than the support of religion.

He won partly by strategy and partly by his historic and memorial remonstrance against any aid whatsoever to church. "Not even three pence should be granted by the State to any church," Madison said.

Now we are trying to reach an understanding of what Madison's famous phrase regarding establishment of church really means. The report of the Committee I feel is quite skimpy on this subject, and it contents itself largely with a brief quotation from the Everson case and a citation of a few other cases. It behooves us, I think, to take into account the warning of the Maryland Court of Appeals in the Horace Mann case, when it said this:

"The problem to be considered and solved when the first amendment was proposed

was not one of hazy or comparative insignificance, but was one of blunt and stark reality which had perplexed and plagued the nations of civilization for 14 centuries, and during that long period of the union of church and state the government of man has produced neither peace on earth nor good will to men."

Now, I take it that we cannot possibly solve here all of the complicated problems relating to separation of church and State. There are too many issues involved, too many Supreme Court decisions to be taken into account.

We cannot say how far we may go here with regard to the authority of the State to authorize and approve child benefit programs, release time programs, the extent of state aid to school busing, scholarship aid, text book allowances for parochial and private schools, assistance for educationally deprived children who are in private schools, nor can we decide finally what contributions can be made to hospitals, nursing homes, orphanages and other church-run institutions.

The Supreme Court of the United States is still struggling with these issues, as is the Congress in the pending education bill. I take it the Congress very gleefully has passed the buck to the Supreme Court in authorizing a taxpayer's suit under the education bill.

The one thing, however, that stands out in the Maryland Court was that the Horace Mann case attempted to give us the meaning of the establishment clause as applied to aid to education. It said there was great doubt about it. They said that no absolute guidelines may be derived from past decisions.

Therefore, I am convinced we ought to undertake to put into exact phrases just how far we can go in granting aid to denomination schools or institutions.

While we cannot do this here on this floor at this time, we can try to be specific by our intentions. What do we intend? What does this Convention intend to be the meaning of those words?

One of the statements that greatly influenced me in this regard was made by Myer Eisenberg, the attorney for the Jewish Community Council of Washington, D. C.

He said this: "We, the Community Council, read the first amendment and its proposed Maryland analogue to bar, that is to say to outlaw, the state payments or aid to